

The Honorable John H. Chun
The Honorable David W. Christel

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAHSA PARVIZ,

Petitioner,

v.

HOWARD BARRON (Warden,
Federal Detention Center SeaTac), COLETTE
PETERS (Director, Bureau of Prisons),

Respondents.

No. C23-1407-JHC-DWC

**RESPONSE TO MOTION FOR
CUSTODIAL TRANSFER**

Note On Calendar: March 15, 2024

Pursuant to Rule 23(b)(2) of the Federal Rules of Appellate Procedure, petitioner Mahsa Parviz has filed a motion for custodial transfer to a transitional living facility in Los Angeles while her habeas petition is pending. Dkt. 44, pp. 1, 4. Though she has styled her motion as unopposed, the respondents do in fact oppose the motion and request that it be denied by the Court.

Rule 23 does not apply to Parviz's pending habeas petition. By its plain language, Rule 23 applies only when "a decision in a habeas corpus proceeding" is "pending review" or "under review" with an appellate court.¹ *Cf. Shabazz v Carroll*, 814 F.2d 1321, 1987 (9th Cir.) (noting that relief under Rule 23 is available only if a transfer would prejudice "review of his petition *in this court*," namely the court of appeals), *vacated in part on other*

¹ If a petitioner is transferred outside of the jurisdiction of a district court while her petition is pending, the district court has the authority to transfer the petition to her new district of confinement pursuant to 28 U.S.C. 1404(a).

grounds, 833 F.2d 149 (9th Cir, 1987); *see also Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) (stating that Rule 23(a) “prohibits transferring custody over prisoners ‘[p]ending review of a decision in a habeas corpus proceeding’ *before the court of appeals*” (emphasis added)). There is no final decision on Parviz’s habeas petition that is “under review” with the Ninth Circuit, and Rule 23 thereby does not apply to these proceedings.² Moreover, Parviz has made no showing that a transfer is imminent or has actually been requested, as she relies only on (1) her own unsupported allegations and (2) written communications establishing that her requested surgery has been scheduled for a confidential date in the next six months. Parviz’s motion must be dismissed.

If the Court disagrees and believes that Rule 23 does apply to these proceedings, the respondents request that they be permitted to make an application under Rule 23(a) before such a transfer.

DATED this 14th day of March, 2024.

Respectfully submitted,

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² Parviz has filed a notice of appeal of the Court’s February 23, 2024 order granting respondents’ motion for extension of time to file an answer and denying various motions filed by Parviz, including motions for default judgment and contempt. Dkt. 34, 38. The February 23, 2024 order is not a final decision on Parviz’s habeas petition, however, and Parviz’s appeal of that order does not divest the district court of jurisdiction or confer jurisdiction on the court of appeals. *See Estate of Marilyn Marie Connors v. O’Connor*, 6 F.3d 656, 658 (9th Cir. 1993). Parviz cannot file a meritless notice appealing nonappealable orders to manufacture the application of Rule 23 to her pending habeas petition.

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and to be served on the Petitioner, Mahsa Parviz who is proceeding *pro se*, by First Class Mail to the following address:

Masha Parviz, Registration No. 54652-509
FDC SeaTac
Federal Detention Center
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s/ John M. Price
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